

Secretary

CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

JAN 17 1975

#170

RECEIVED
JAN 17 1975
FBI
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Minnesota [REDACTED]

[REDACTED]
Manager
[REDACTED]
[REDACTED]
[REDACTED] Minnesota [REDACTED]

Dear Mr. [REDACTED]

Your letter of December 30, 1974, queries whether the Consumer Product Safety Act applies to your company, a manufacturer of small farm equipment. "Consumer product," as defined by section 3(a)(1) of the Act (15 U.S.C. 2052), means:

[A]ny article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include (A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer,...

In explaining the definition, the legislative history of the Act states:

[P]roducts which are primarily or exclusively sold to industrial or institutional buyers would be included within the definition of consumer product so long as they were produced or distributed for use of consumers.

It is not intended that true "industrial products" be included within the ambit of the Product Safety Commission's authority.

ADVISORY OPINION

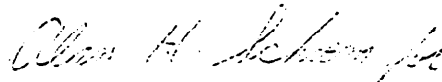
Thus, your committee has specifically excluded products which are not customarily produced or distributed for sale to or use of consumers. The occasional use of industrial products by consumers would not be sufficient to bring the product under the Commission's jurisdiction. The term "customarily" should not be interpreted as intending strict adherence to a quantum test, however. Your committee is aware that some products which were initially produced or sold solely for industrial application have often become broadly used by consumers. If the manufacturer or distributor of an industrial product fosters or facilitates its sale to or use by consumers, the product may lose its claim for exclusion if a significant number of consumers are thereby exposed to hazards associated with the product. (H.R. Rep. No. 92-1153, 92d Cong., 2d Sess. 27 (1972))

In light of the definition and its legislative history, if your hydraulic front end loaders are true industrial products (e.g., used customarily for agricultural production) your company would not be covered by the Consumer Product Safety Act. However, the manufacturer has the initial responsibility for determining whether the distribution and use pattern of his product would result in its being considered a consumer product. Any doubt should be resolved in favor of considering a product a consumer product.

The Commission has not undertaken any regulatory action for hydraulic front end loaders used by consumers. There are, however, certain general regulations dealing with record-keeping and reporting which apply to manufacturers of all consumer products. Enclosed are copies of those regulations. As you can see the recordkeeping regulation (September 3, 1974 Federal Register notice) is currently a proposal rather than a final regulation. The Commission expects to issue the final regulation in the near future.

If I can be of any further assistance, please feel free to write again.

Sincerely,



Margaret A. Freeston
Acting Assistant General Counsel

Enclosure: Sept 3, 1974 FR Recordkeeping proposal
Feb. 19, 1974 FR Section 15 Notice rule

AGC/S

December 30, 1974

Office of the General Counsel
Consumer Products Safety Commission
1750 K St. N.W.
Washington, D.C. 20207

Gentlemen:

We have had some difficulty determining in what way, if any, the Consumer Products Safety Act might pertain to us. The local CPS office suggested that we contact you.

We are a small farm equipment manufacturing company employing nine factory workers and an administrative staff of two. We produce hydraulic front end loaders. They are used on farm tractors for manure and snow handling. We do not sell directly to the public, but distribute our products through dealers and distributors.

Does the Consumer Products Safety Act apply to us? If so, how may we obtain the specific guidelines or regulations?

Sincerely,

